IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9869 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESH BABU NAYAK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9869 of 2003

MR AR SHAIKH for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat city, on 29.3.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, (hereinafter referred to as "the PASA Act" for short). The petitioner is declared as "dangerous person" under the PASA Act.

The grounds served upon the petitioner and placed on record clearly reveals that in passing the order impugned, the detaining authority took into consideration two aspects, firstly, the registration of three offences against the petitioner under sec. 399, 379 of IPC and under sec. 25(1) of the Arms Act. Three offences came to be registered against the petitioner on 12.12.2002, 22.2.2003 and 27.2.2003. In addition to this, secondly, the detaining authority also took into consideration the statements of witnesses informants recorded by the proposing authority on 13.3.2003 and verified by detaining authority on 25.3.2003. Both the witnesses narrated the incidents occurred on 26.1.2003 and 24.2.2003 in which the incident occurred on 26.1.2003 it was alleged against the petitioner that within the limits of Rander Police Station, with the assistance of his accomplishes the petitioner detained one of the witness in criminal case filed against the petitioner and others, and picked quarrel with him. The quarrel attracted the crowd. When some of the persons attempted to rescue the witness, the petitioner and his accomplishes with the weapons like sticks, revolver etc. rushed towards then and due to fear the public order was affected and the crowd was dispersed. The second incident is of 24.2.2003 wherein the witness when was doing business at about 7.00pm along with accomplishes, the petitioner reached at that place and took the witness towards the Sayana. When witness resisted the attempt of the petitioner and his accomplishes, he was beaten. Though the crows was gathered and some of them attempted to rescue the witness but the petitioner and his accomplishes with the weapons like sword, knife, iron rods rushed towards them and due to fear, the crowd dispersed and public order was affected. It is alleged that the petitioner and his accomplishes created terror amongst the public and hence, the impugned order.

On behalf of petitioner ld. advocate Ms. Bharati Rana for Mr AR Shaikh and Ld. AGP Ms. Panchal for the respondents were heard at length.

Various contentions were raised and controverted by ld. AGP. From the rival contentions and from the

record available in the petition, it clearly appears that the petition can be disposed of only on the ground of non-application of mind by the detaining authority in passing the order. It is clear from the grounds served upon the petitioner that the petitioner was under judicial custody when the order of detention came to be served upon the petitioner. However, the detaining authority came to the conclusion that though the petitioner was under judicial custody, but was likely to be released on bail at any time and was likely to continue his illegal activities. According to the contention on behalf of the petitioner, there was no any material with the detaining authority to come to the conclusion. While ld. AGP has placed reliance on two decisions of the Apex Court; one in the matter of Meena Jayendra Thakur vs. Union of India and ors., as reported in (1999)8 SCC p. 177 and other in the matter of Ahamed Nassar vs. State of Tamil Nadu & Ors., as reported in (1999) 8 SCC p. 473. Considering the rival contentions, the prime question which arises for determination is whether there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail and was likely to continue his illegal activity in view of the fact that at the time of passing of the order, the detenu was under judicial custody. In the above said two decisions of the Apex Court, the Apex Court come to the conclusion that those cases were not the case of no material on record and non application of mind by the detaining authority but so far as the case on hand is concerned, the facts are covered by the decision of the Apex Court in the matter of Amritlal and others vs. Union Government through Secretary, Ministry of Finance and others as reported in AIR 2000 SC 3675, wherein in clear terms the Apex Court ruled that before coming to the conclusion that the detenu was likely to be released on bail, there must be cogent material on record. In the present case, there is nothing on the record to come to the conclusion that the petitioner was likely to be released on bail. Ld. advocate for the petitioner makes a statement that no bail application was ever preferred by the petitioner to be released on bail. Therefore, there is non-application of mind of the detaining authority in vital important aspect of the matter vitiating the order impugned in this special civil application. The order impugned on this ground alone is required to be quashed and set aside.

In the result, this special civil application is

allowed. The order impugned in this special civil application passed on 29.3.2003 by the Police Commissioner, Surat City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose.

(J.R. VORA, J.)

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